



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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October 30, 2015

Mr. Sebastian Chapman - #860995
Miami Correctional Facility
3038 West 850 South
Bunker Hill, Indiana 46914

Re: Formal Complaint 15-FC-252; Alleged Violation of the Access to Public Records Act by the Miami Correctional Facility

Dear Mr. Chapman,

This advisory opinion is in response to your formal complaint alleging Miami Correctional Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Facility has responded to your complaint via Mr. Bob Bugher, Esq., General Counsel. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 18, 2015.

BACKGROUND

Your complaint dated September 14, 2015 alleges Miami Correctional Facility violated the APRA by denying you access to public records.

On or prior to August 31, 2015 you requested a copy of your "flag page". On August 31, 2015, your request was denied pursuant to Ind. Code § 5-14-3-4(b)(23)(B). However, you contend this record is not confidential.

On October 8, 2015 Counsel Bugher responded. He reasserted the confidentiality of the record citing, 210 IAC 1-6-2(3)(A) as authority.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. Miami Correctional Facility is a public agency for the purposes of the



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APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, any person has the right to inspect and copy the Facility's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

The Facility has relied on 210 IAC 1-6-2(3)(A), which states "All offender or juvenile information collected and retained by the department shall be classified in the following manner:

Confidential information shall include, but is not limited to, the following:

- (A) Offender diagnostic/classification reports.
- (B) Criminal intelligence information.
- (C) Information that, if disclosed, might result in physical harm to that person or other persons.
- (D) Information obtained upon promise of confidentiality.
- (E) Internal investigation information.
- (F) All juvenile records.
- (G) Any other information required by law or promulgated rule to be maintained as confidential.

Pursuant to Indiana Code 5-14-3-4(a)(2)

"The following public records are excepted from section 3 [IC 5-14-3-3] of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery (2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute."

The Facility has determined that 'flag' pages are confidential as offender diagnostic or classification reports. This Office is not the appropriate administrative forum to determine whether the flag pages fall into this category or not. Therefore, I cannot make a determination concluding the Facility inappropriately withheld the information from you.



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CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that Miami Correctional Facility has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LHB", is written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Mr. Bob Bugher, Esq.